

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Issue

1. The issue presented for consideration by the Board was:
Whether Historic Landmarks Foundation of Indiana, Inc. (Historic Landmarks) was the owner of record of the real property for the March 1, 2003 assessment date and therefore entitled to 100% property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classification of educational and charitable purposes.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Mary F. Burger, Director of Finance, filed a Form 132, Petition for Review of Exemption, on behalf of Historic Landmarks, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on October 30, 2003. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued the Notice of Action on Exemption Application (Form 120) on October 2, 2003, determining that the real property is 100% taxable.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1 a hearing was conducted on May 12, 2004, in South Bend, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were present at the hearing:

For the Petitioner:

Todd A. Zeiger, Director of Historic Landmarks

For the Respondent:

Kevin Klaybor, PTABOA President

Ross A. Portolese, PTABOA Member

Dennis J. Dillman, PTABOA Member

Terry Wozniak, Deputy County Attorney

Rosemary R. Mandrici, Portage Township Assessor

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Todd Zeiger

For the Respondent:

Ross Portolese

Kevin Klaybor

Rosemary Mandrici

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of a corporate warranty deed from Standard Federal Bank to Historic Landmarks, dated August 17, 2001.

Petitioner's Exhibit 2 – A copy of a plat map of the subject area.

Petitioner's Exhibit 3 – A copy of a corporate warranty deed from Historic Landmarks to EIII Holdings, LLC, dated December 7, 2001.

Petitioner's Exhibit 4 – A copy of a corrective corporate warranty deed from Historic Landmarks to EIII Holdings, LLC, dated March 27, 2002 with a plat map of the area attached.

For the Respondent:

None

7. The following items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 132 petition and related attachments.
 - Board Exhibit B – Notice of Hearing on Petition.
8. The Administrative Law Judge did not conduct an onsite inspection of the property.

Jurisdictional Framework

9. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

Administrative Review and the Petitioner's Burden

10. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

11. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
12. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Constitutional and Statutory Basis For Exemption

13. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
14. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
15. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810 (Ind. Tax 1996) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm’rs v. Fort Wayne Sport Club*, 258 N.E. 2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

16. In Indiana, the general rule is that all property in the State is subject to property taxation. See Ind. Code § 6-1.1-2-1.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts (NAME) v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996).
18. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax 1987).

Discussion of Issue

Whether Historic Landmarks Foundation of Indiana, Inc. (Historic Landmarks) was the owner of record of the real property for the March 1, 2003

assessment date and therefore entitled to 100% property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classification of educational and charitable purposes.

20. The Petitioner contends it was the owner of the subject property as of the March 1, 2003 assessment date. It therefore qualifies for exemption from property taxation as educational and charitable under Ind. Code § 6-1.1-10-16.
21. The Respondent contends the Petitioner's exemption was denied based on the fact that, as of March 27, 2002, the property was in the name of EIII Holdings, LLC. Therefore, Historic Landmarks was no longer eligible for this exemption.
22. The applicable statute and rules governing this Issue is:
 - Ind. Code § 6-1.1-1-9(b)**
...[T]he holder of the legal title to personal property, or the legal title in fee to real property, is the owner of that property.
 - Ind. Code § 6-1.1-10-16 (a)**
All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.
 - Ind. Code § 6-1.1-1-2 and 2002 Real Property Assessment Manual, page 9**
The assessment date is March 1 of any year for all tangible property.
23. Evidence and testimony considered particularly relevant to this determination include the following:
 - a. Historic Landmarks originally purchased five parcels from Standard Federal Bank on August 17, 2001. *Petitioner's Ex. 1 and Zeiger testimony.*
 - b. On December 7, 2001, Historic Landmarks deeded the subject property to EIII Holdings, LLC in error. *Petitioner's Ex. 3 and Zeiger testimony.*
 - c. On March 27, 2002, Historic Landmarks recorded a corrective corporate warranty deed to EIII Holdings, LLC removing the subject property from the EIII Holdings, LLC name and putting it back in the name of Historic Landmarks. *Petitioner's Ex. 4 and Zeiger testimony.*

- d. There was an error in the key number on the original deed. It was this key number error that resulted in the PTABOA being unable to locate the corrective corporate warranty deed that transferred the property back to Historic Landmarks. *Zeiger testimony.*
- e. The PTABOA denied the Historic Landmarks claim for exemptions because the subject property, according to the county records, was in the name of EIII Holdings, LLC on the assessment date in question. *Board Ex. A, Mandrici and Klaybor testimony.*

Analysis of the Issue

- 24. The relevant facts in this appeal are undisputed.
- 25. The Petitioner's Application for Exemption was denied solely because county records showed that the Petitioner did not own the property on the assessment date in question. Thus, the outcome of this case hinges on an examination of the testimony and evidence to determine the legal owner of the property on March 1, 2003.
- 26. Generally, the "owner" of real property is the holder of the legal title in fee. *Ind. Code § 6-1.1-1-9.*
- 27. Undisputed testimony and documentary evidence clearly indicates that the Petitioner held legal title to the subject property on March 1, 2003. While title to the subject property was erroneously transferred to a holding company on December 7, 2001, the Petitioner has shown that this error was legally corrected on March 27, 2002, and the Petitioner regained legal title to the property on this date. *Petitioner's Ex. 3 and 4, Zeiger testimony.*
- 28. No evidence in the record shows any transfer of the subject property between March 27, 2002 and March 1, 2003. Thus, Historic Landmarks held legal title to the subject property on March 1, 2003.

29. As a result, the Board concludes that St. Joseph County PTABOA's denial of the Petitioner's Application for Exemption is unsupported by the evidence. Accordingly, Historic Landmarks is entitled to property taxation exemption for the 2003 assessment year. Historic Landmarks' land and improvements are determined to be 100% exempt.

Summary of Final Determination

Whether Historic Landmarks Foundation of Indiana, Inc. (Historic Landmarks) was the owner of record of the real property for the March 1, 2003 assessment date and therefore entitled to 100% property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classification of educational and charitable purposes.

30. The Petitioner has met its burden in this appeal and is entitled to a 100% property taxation exemption for 2003.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS-

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.